FIFTH SECTION

CASE OF AFFLERBACH v. GERMANY

(Application no. 39444/08)

JUDGMENT

STRASBOURG

24 June 2010

This judgment is final but it may be subject to editorial revision.

In the case of Afflerbach v. Germany,

The European Court of Human Rights (Fifth Section), sitting as a Committee composed of:

Karel Jungwiert, *President,*

Renate Jaeger,

Mark Villiger, *judges,*

and Stephen Phillips, *Deputy Section Registrar*,

Having deliberated in private on 31 May 2010,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 39444/08) against the Federal Republic of **Germany** lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a German national, Mr Reinhard Afflerbach ("the applicant"), on 12 August 2008.

2. The applicant was represented by Mr G. Rixe, a lawyer practising in Bielefeld. The German Government ("the Government") were represented by their Agent, Mrs A. Wittling-Vogel, *Ministerialdirigentin*, of the Federal Ministry of Justice.

3. On 12 December 2008 the President of the Fifth Section decided to give notice of the application to the Government. The Federal Republic of **Germany** having accepted the provisional application of the provisions of Protocol 14 governing the power of three judge committees to decide on cases in which there is well-established case-law, it was decided to assign the application to a Committee. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 3).

4. The applicant, while agreeing that the application was the subject of well-established case-law, objected to the assignment of the case to a Committee. He requested the Court to render a pilot judgment with respect to the lack of an effective remedy under German law capable of affording redress for unreasonable length of civil proceedings. Having examined the applicant's submissions, the Court rejects his objection.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1964 and lives in Bad Berleburg.

A. Background to the case

6. The applicant has a daughter who was born out of wedlock on 25 July 1997. He lived with the mother of the child from April 1997 until their separation on 29 June 1998. The daughter remained with the mother.

7. Following a request of the applicant for regulation of his contact rights lodged with the Bad Berleburg District Court (*Amtsgericht*), the parents concluded an agreement on 2 August 1999, pursuant to which the applicant had the right to have contact with the child every Sunday from 2 p.m. to 6 p.m. The last contact between the applicant and his daughter took place on 24 October 1999.

8. In November 1999 the mother and the daughter moved from Bad Berleburg to Stralsund without notifying the applicant. The mother has refused to allow any further contact between the

applicant and the child ever since.

B. The proceedings before the Stralsund District Court

9. On 20 January 2000 the applicant lodged a request with the Stralsund District Court for a new regulation of his contact rights on the ground that following his daughter's move to Stralsund the considerable distance between their respective places of domicile required a review of the relevant stipulations in the agreement concluded on 2 August 1999. The mother objected by written submissions dated 16 February 2000, alleging that following meetings between the applicant and their daughter prior to her move to Stralsund, the latter had shown signs of behavioural disorders.

10. The Stralsund District Court obtained the opinions of the Siegen Wittgenstein District's and Stralsund Youth Welfare Offices dated 9 and 29 March 2000, respectively stating that the mother alleged that the applicant had sexually abused their daughter on the occasion of previous reunions.

11. On 15 May 2000 the Stralsund District Court held a first hearing.

On 18 May 2000 the District Court ordered a psychological expert report, which was rendered on 14 July 2000. The expert opinion did not confirm the mother's allegations of sexual abuse and recommended a regulation of the applicant's contact rights in the interest of the child's welfare.

12. On 14 August 2000 the District Court scheduled a second hearing for 18 September 2000, which was postponed at the request of the mother's lawyer and finally cancelled following notification by the applicant that he and his lawyer were not able to attend on the rescheduled date.

13. By a letter to the District Court dated 13 October 2000 the applicant pointed out that the mother had meanwhile refused him contact with the child for almost a year, and asked for an indication when a further hearing in the matter would take place.

14. On 26 October 2000 the District Court scheduled a hearing for 16 November 2000, which was postponed to 25 January 2001 at the request of the mother's lawyer. The District Court heard the parents, the appointed expert, the representative of the Stralsund Welfare Office and an expert witness presented by the mother.

15. By decision of 14 February 2001, the Stralsund District Court held that the suspicion of sexual abuse had not been confirmed and granted the applicant the right to have supervised contact with the child from 9 am to 12 midday every third Friday of the month, in the presence of a representative of the Stralsund Youth Welfare Office.

The decision was served on the applicant on 10 April 2001.

C. The first set of proceedings before the Rostock Court of Appeal

16. On 9 May 2001 the mother lodged an appeal with the Rostock Court of Appeal (*Oberlandesgericht*) asking for the rejection of the father's right of contact. The applicant objected to the appeal by written submissions dated 28 June 2001 and asked for an extension of his contact rights to two days per month without monitoring.

17. On 12 November 2001 the Rostock Court of Appeal heard the parents and the representative of the Stralsund Welfare Office.

18. By a decision of 20 December 2001 the Rostock Court of Appeal provisionally suspended the execution of the Stralsund District Court's decision of 14 February 2001 to the extent the applicant had been granted contact rights that went beyond supervised access. It further appointed a *curator ad litem* to represent the child and decided to obtain a further psychological expert opinion on a possible arrangement regarding the applicant's contact rights which was ordered on 1 March 2002. The mother, who had meanwhile moved to Berlin with her daughter, refused any contact between the *curator ad litem* and the child and rejected the expert appointed by the Court of Appeal.

19. On 5 August 2002 the expert rendered an opinion on the basis of an examination of the applicant on which both the mother and the applicant commented by written submissions on 16 September and 16 October 2002 respectively.

20. On 23 October 2002 the Court of Appeal scheduled a hearing for 27 January 2003 that was not attended by the mother or the child due to the latter's sickness and therefore had to be postponed

to 3 March 2003.

21. On 3 March 2003 the Court of Appeal heard the child, the parents, the child's *curator ad litem* and the representative of the Stralsund Youth Welfare Office. The mother again refused an examination of the child and herself by the appointed expert.

22. On 19 March 2003 the Court of Appeal specified its decision to take evidence dated 20 December 2001 with a view to obtaining a psychological expert opinion on the question whether there was any indication of sexual abuse of the child by the applicant and whether contact between the applicant and the child was in the interest of the child's welfare. The Court of Appeal further reconfirmed the appointment of the previously nominated expert.

23. On 15 July 2003 the Court of Appeal scheduled a hearing for 17 November 2003, after three attempts in April, June and July 2003 by the expert to schedule appointments with the mother for an examination had failed. A representative of the Youth Welfare Office as well as the child's *curator ad litem* were present at the hearing. At the request of the mother the child's psychotherapist was heard as a witness.

24. By a decision dated 28 January 2004 the Court of Appeal suspended the applicant's contact rights until 31 December 2007 and obliged the mother to report to the applicant on the personal development of his daughter. The Court of Appeal held that even though it was not convinced of the mother's accusations that the child had been sexually abused by the applicant, it was not in the interest of the child's welfare to grant the father right of contact. It found that the parents' relationship had completely deteriorated and an enforcement of the applicant's contact rights against the will of the mother would put even more pressure on the child.

25. On 3 March 2004 the applicant lodged a constitutional complaint with the Federal Constitutional Court.

26. On 9 June 2004 the Federal Constitutional Court set aside the decision of 28 January 2004 and remitted the case to the Rostock Court of Appeal. The Federal Constitutional Court found that the applicant's right to the care and upbringing of his child had been infringed on the ground that the Court of Appeal had not sufficiently taken into account the welfare of the child and the parenting right of the father in its decision.

D. The second set of proceedings before the Rostock Court of Appeal

27. On 3 November 2004 the Court of Appeal again heard the parents, the child's *curator ad litem* and the representative of the Stralsund Youth Welfare Office.

28. On 19 November 2004 the Court of Appeal heard the daughter.

29. By decision dated 13 December 2004 the Court of Appeal confirmed its order to obtain an expert opinion dated 19 March 2003 and reappointed the same expert who had previously been nominated and rejected by the mother. It further asked for an opinion by the Berlin-Neukölln Youth Welfare Office which had become locally competent following the mother's move to Berlin. The opinion was delivered on 18 January 2005.

30. On 8 April 2005 the Court of Appeal rejected a challenge lodged by the mother for bias on the part of the expert on the ground that it had been lodged outside the statutory time-limit.

31. On 11 May 2005 the Court of Appeal instructed the expert to render an opinion on the basis of the exploration of the father and the case file, after having been informed on 4 May 2005 that an attempt by the expert to meet with the mother had failed due to the mother's objection.

32. On 8 August 2005 and on 11 October 2005 the Court of Appeal inquired why the expert opinion had not yet been finalised.

33. On 14 October 2005 the expert opinion was delivered and served on the applicant on 24 October 2005. According to the findings of the expert there were no substantiated indications that the child had been sexually abused by the father.

34. On 12 January 2006 a further challenge lodged by the mother for bias on the part of the expert was rejected by the Court of Appeal.

35. On 17 January 2006 the Court of Appeal scheduled a further hearing for 14 February 2006, which the mother and child did not attend and which was therefore rescheduled for 17 March 2006.

On the occasion of the hearing the child, the parents, the *curator ad litem* and a representative of the Neukölln Youth Welfare Office were heard.

36. By a decision of 20 April 2006, the Court of Appeal deprived the mother of custody of the child to the extent that her approval of the child's examination by an expert was concerned, and appointed the Neukölln Youth Welfare Office as the child's guardian (*Ergänzungspfleger*) in this respect. The Court of Appeal further obliged the mother to permit the guardian contact with the child and instructed the bailiff to enable such contact, by force if need be.

37. Nevertheless, the mother obstructed two subsequent attempts by the Youth Welfare Office on 26 September and 20 October 2006 to collect the child with a view to bringing her to the expert for examination.

38. On 13 December 2006 the Court of Appeal informed the expert that the examination of the child should be finalised by 31 January 2007. It asked the expert to schedule further dates for a corresponding appointment and instructed the appointed guardian at the Neukölln Youth Welfare Office to see to it that such appointments were implemented.

39. On 9 January 2007 the guardian informed the Court of Appeal that in her opinion a forced meeting with the expert would not be in the interest of the child's welfare.

40. On 16 January 2007 the expert informed the Court of Appeal that the guardian had not brought the child to appointments scheduled for 9 and 16 January 2007.

41. On 22 January 2007 the child's *curator ad litem* pointed out that an examination of the child had been ordered by the Court of Appeal on 19 March 2003 but had still not occurred to this date and denounced the guardian's refusal to implement the Court of Appeal's orders.

42. In reply to an inquiry by the Court of Appeal of 23 January 2007, the Head of the Neukölln Welfare Youth Office supported the decision of the guardian not to proceed to an examination of the child by force.

43. By decision of 20 March 2007 the Court of Appeal amended its decision of 20 April 2006 and appointed a new guardian for the child. An attempt by the newly appointed guardian to call for the child on 3 July 2007 was to no avail.

44. On 13 July 2007 the Court of Appeal further amended its decision of 20 April 2006 and obliged all third persons in charge of the child to hand her over to the guardian for the purpose of examination by the expert.

45. On 17 March 2008, following a further move of the mother and daughter to Bad Zwesten-Oberurff, the Court of Appeal appointed a new expert for the child's examination and the Schwalm-Eder District Youth Welfare Office as a new guardian for the child.

46. A first contact between the guardian and the mother was established on 28 April 2008. Furthermore, the newly appointed expert confirmed by a letter dated 18 June 2008 that the mother had attended a first appointment for examination.

47. On 5 August 2008 the applicant lodged a constitutional complaint with the Federal Constitutional Court regarding the lack of an effective remedy as regards the length of the instant proceedings.

48. On 15 December 2008 the expert opinion was submitted to the Court of Appeal who set a deadline of three weeks for comments by the parties. According to the expert, the daughter's rejection of her father constituted a strategy adopted by the child with a view to handling the tense situation caused by her mother's conduct. Furthermore, due to the passage of time a scientific clarification of the allegations of sexual abuse was no longer possible. In their written submissions the applicant as well as the Youth Welfare Office asked for an additional assessment in writing by the expert whether and under which conditions contacts between the applicant and his daughter could be established. By a letter of 26 January 2009 the Court of Appeal made the related request and the expert submitted her additional observations to the court on 6 February 2009. The expert found that there was a risk that contact against the daughter's will would further unsettle her.

49. On the occasion of a hearing on 18 May 2009 the parties and the child's guardian and *curator ad litem* were heard. The guardian objected to a forced establishment of contacts between father and daughter. The applicant's daughter was also heard by the court and objected to having contact with her father. A supplementary expert statement was ordered by the court and submitted on 15 June

2009. In his written observations of 3 July 2009 the applicant contested the expert's supplementary statements. The expert commented by written submissions of 27 July 2009. A further request by the court for clarification was answered by the expert on 17 August 2009 and was forwarded to the parties for final observations.

50. By a judgment of 25 November 2009 the Court of Appeal amended the decision of the Stralsund District Court dated 14 February 2001 and regulated the applicant's contact rights for the period until 31 July 2011. It obliged the mother to inform the applicant twice a year in writing about their daughter's development and to communicate her current address. The applicant was granted the right to send a letter and photos to the child once a month through an independent intermediary to be appointed by the guardian. No further contact rights were granted. Relying in particular on the findings of the expert as well as the guardian and the daughter's own statements, the court held that for the time being personal contact between the applicant and his daughter against the latter's will would be contrary to the best interest of the child. The judgment was served on the applicant on 30 November 2009 and has become final.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

51. The applicant complained under Article 6 and 8 of the Convention about the length of the proceedings regarding the determination of his contact rights in respect of his daughter.

52. The Court who is the master of the characterisation to be given in law to the facts of the case (see *Kutzner v. **Germany***, no. 46544/99, § 56, ECHR 2002-I) considers that the complaint raised by the applicant under Article 8 is closely linked to his complaint under Article 6 and will accordingly be examined solely under Article 6 § 1 of the Convention, which, in so far as relevant, reads as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal..."

53. The Government while acknowledging the considerable duration of the proceedings contested that argument. They contended that even though the proceedings might not have been complex their conduct had nevertheless been of a certain difficulty since the case had not only required the taking of evidence from the parents, the child and the Youth Welfare Office but had also involved the appointment of a guardian and a *curator ad litem* as well as the commissioning of expert opinions. While conceding that the applicant's conduct had not contributed to the long duration of the proceedings, they adduced that their length had been mainly due to the obstructive behaviour of the mother and that the Court of Appeal's procedural means to react to such behaviour and to expedite the proceedings had been limited. As to what was at stake for the applicant, the Government pointed out that following the Stralsund District Court's decision of 14 February 2001 the applicant would have been entitled to exercise his right to supervised contact thereby limiting the negative impact the length of the proceedings had on the relation with his daughter.

54. The period to be taken into consideration began on 20 January 2000 when the applicant lodged his request for regulation of his contact rights with the Stralsund District Court and ended on 30 November 2009, the day on which the Rostock Court of Appeal's judgment of 25 November 2009 was served on the applicant. It thus lasted over 9 years and 10 months for three levels of jurisdiction including a remittal.

A. Admissibility

55. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

56. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII). In cases relating to civil status, what is at stake for the applicants is also a relevant consideration, and special diligence is required in view of the possible consequences which the excessive length of proceedings may have, notably on enjoyment of the right to respect for family life (*Laino v. Italy* [GC], no. 33158/96, § 18, ECHR 1999-I).

57. The Court has frequently found violations of Article 6 § 1 of the Convention in cases raising issues similar to the one in the present case (see *Frydlender*, cited above).

58. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case.

59. In this context the Court places special emphasis on the importance of what was at stake for the applicant. It reiterates that in particular in cases concerning a person's relationship with his or her child there is a duty to exercise exceptional diligence in view of the risk that the passage of time may result in a *de facto* determination of the matter (see *Süß v. **Germany***, no. 40324/98, § 100, 10 November 2005). The Court takes note of the Government's submissions in this respect that ever since the Stralsund District Court's decision of 14 February 2001, the applicant could have exercised his right to supervised contact with his daughter thereby limiting the negative impact the duration of the subsequent proceedings before the Rostock Court of Appeal had on the relation with his child. However, the Court finds that it must have been obvious to the Court of Appeal that supervised access was not practicable given the obstructive conduct of the mother and the inactivity of the competent Youth Welfare Office. In addition, any contact would have been overshadowed by the serious allegations of sexual abuse which also were of relevance for the regulation of the applicant's contact rights. The Court therefore finds that an expeditious clarification of the circumstances of the case was of particular importance for the applicant with a view to preventing a further alienation of the child and to finding a regulation of the applicant's contact rights in the child's best interest. The particular circumstances of the case placed in particular the Court of Appeal under a specific obligation to take special precautions in order to prevent any unnecessary delays, such as adhering to a very close time-schedule and closely supervising the taking of evidence.

60. As to the conduct of the proceedings, the Court accepts that the domestic courts were faced with the obstructive behaviour of the mother and that the procedural means to react to such behaviour and to expedite the proceedings and in particular the mother's cooperation with the expert might have been limited to some extent. The Court further acknowledges that the hearing of extensive expert evidence and the taking of expert opinions with respect to the regulation of the applicant's contact rights required a certain period of time. While accepting that these circumstances may to some extent justify the duration of the proceedings at first instance, the Court nevertheless finds that there have been substantial periods of delay during the proceedings before the Court of Appeal in this respect.

61. The Court notes in particular that the additional examination of the child by the expert in connection with the mother's allegations of sexual abuse was ordered by the Court of Appeal only on 19 March 2003, approximately one year after the expert had been instructed to render an opinion on a possible arrangement of the applicant's contact rights and even though it was clear since the first instance proceedings that clarification of these allegations were of significance for the determination of the applicant's contact rights.

62. Furthermore, the Court cannot ignore that following the Court of Appeal's order of 19 March 2003 it took more than five years until an examination of the child by an expert occurred. Notwithstanding the Court of Appeal's order, an examination of the child by the expert did not take place during the first set of proceedings before the Court of Appeal which ended by the court's decision of 28 January 2004. Following the remittal of the case by the prompt decision of the Federal

Constitutional Court dated 9 June 2004, it took until 15 December 2008 before an expert opinion based on the child's examination was obtained by the Court of Appeal. It was only on 20 April 2006 that the Court of Appeal decided to deprive the mother of custody of the child to the extent that her approval of the child's examination by an expert was concerned and to appoint a guardian for the child in this respect. It further took until 17 March 2008 for the Court of Appeal to appoint a new expert instead of the one initially appointed in 2001 and who had ever since been rejected by the mother.

63. In view of the above considerations, the Court considers that the Rostock Court of Appeal did not display the required diligence in the conduct of the proceedings before it.

64. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

There has accordingly been a breach of Article 6 § 1.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

65. The applicant further complained under Article 13 of the Convention that he did not have at his disposal an effective domestic remedy for his complaint concerning the length of the proceedings.

Article 13 reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

66. The Government did not contest this argument. They pointed out that the Ministry of Justice was in the process of elaborating a draft bill for the implementation of a domestic remedy in this respect.

67. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

68. The Court has already held that there is no effective remedy under German law capable of affording redress for unreasonable length of civil proceedings (see *Sürmeli v. **Germany*** [GC], no. 75529/01, §§ 103-108, ECHR 2006-VII, and *Herbst v. **Germany***, no. 20027/02, §§ 65-66, 11 January 2007). It takes note of the Government's submissions according to which the elaboration of a solution in this respect is still under way.

69. Accordingly, the Court considers that the applicant did not have an effective remedy within the meaning of Article 13 of the Convention which could have expedited the contact right proceedings or provided adequate redress for delays that had already occurred.

70. There has therefore been a violation of Article 13 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

71. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

72. The applicant claimed 26,494.48 euros (EUR) in respect of pecuniary damage with respect to child maintenance paid in the period from January 2000 to May 2009 on the ground that during this period he was deprived of his rights and duties as a parent due to the domestic courts' failure to conduct the proceedings expeditiously.

73. In respect of non-pecuniary damage, the applicant maintained that the excessive length of the proceedings resulted in his child being alienated from him which had caused him considerable distress and frustration. Furthermore, the mother's allegations of sexual abuse had forced him to give

up his political career. In view of what was at stake for him the applicant therefore claimed EUR 20,000.00 in respect of non-pecuniary damage for the excessive length of the proceedings. He further claimed an additional amount of EUR 10,000 as regards the lack of an effective remedy before the national courts in this respect.

74. The Government argued that the applicant's claim for pecuniary damages had no connection with the delays to the proceedings since the applicant would have been under an obligation to pay child maintenance in any event, irrespective of the dispute regarding his contact rights.

75. As regards the non-pecuniary damage claimed, the Government argued that the applicant's claims were excessive.

76. The Court observes that the pecuniary damage alleged by the applicant was not caused by the length of the proceedings before the domestic courts and therefore does not discern any causal link between the violation found and the pecuniary damage alleged. Accordingly, it considers that no award can be made to the applicant under this head.

77. On the other hand, the Court considers that the applicant must have sustained non-pecuniary damage as a result of the excessive length of the proceedings. Ruling on an equitable basis and having regard to the nature of the Convention violations it has found, it awards him EUR 7,000 under that head.

B. Costs and expenses

78. The applicant also claimed EUR 1,489.52 corresponding to his lawyer's fees in connection with the constitutional complaint regarding the length of the proceedings, EUR 12,521.52 for the residual costs and expenses incurred before the domestic courts and EUR 2,933.83 for those incurred before the Court.

79. The Government contested these claims. They submitted that the costs claimed for the proceedings before the national courts were only partly caused by the length of the proceedings. Furthermore, the costs for the proceedings before the Federal Constitutional Court could not be claimed, as the Court, in its judgment of *Sürmeli v. **Germany***, had found that a constitutional complaint was not an effective remedy against proceedings that lasted too long. As regards the costs incurred before the Court, the Government maintained that the applicant had failed to indicate the number of actual hours spent by his lawyer on the case or the hourly rate charged, which made it impossible to judge whether the amount claimed was reasonable.

80. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers that the applicant has not established that the costs and expenses claimed for the proceedings before the domestic courts were incurred by him in order to seek prevention or rectification of the specific violation caused by the excessive length of the proceedings. However, seeing that in length of proceedings cases the protracted examination of a case beyond a "reasonable time" involves an increase in the applicants' costs (see, among other authorities, *Sürmeli v. **Germany*** [GC], no. 75529/01, § 148, ECHR 2006-...), it does not find it unreasonable to make to the applicant an award of EUR 500 under this head. The Court further considers it reasonable to award the sum of EUR 2,933.83 covering costs for the proceedings before the Court in full.

C. Default interest

81. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds* that there has been a violation of Article 13 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months,
   (i) EUR 7,000 (seven thousand euros) in respect of non-pecuniary damage;
   (ii) EUR 3,433.83 (three thousand four hundred thirty-three euros and eighty-three cents) in respect of costs and expenses;
   (iii) any tax that may be chargeable to the applicant on the above amounts;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 24 June 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips Karel Jungwiert
Deputy Registrar President

AFFLERBACH v. GERMANY JUDGMENT